

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
MOHAMMAD SAAILI SHIBIN, )  
a/k/a "Khalif Ahmed Shibin," )  
a/k/a "Mohammad Ali," )  
a/k/a "Ali Jama," )  
 )  
Defendant. )

CRIMINAL CASE NO.  
2:11cr33

TRANSCRIPT OF PROCEEDINGS  
(**Testimony of Captain M. D. Makane**)

Norfolk, Virginia  
April 19 and 20, 2012

BEFORE: THE HONORABLE ROBERT G. DOUMAR,  
United States District Judge, and a jury

APPEARANCES:

UNITED STATES ATTORNEY'S OFFICE  
By: Joseph E. DePadilla, Esquire  
Benjamin L. Hatch, Esquire  
Brian J. Samuels, Esquire  
Paul Casey, Esquire  
Assistant United States Attorneys  
Counsel for the United States

ZOBY & BROCCOLETTI, P.C.  
By: James O. Broccolletti, Esquire  
Counsel for the Defendant

## I N D E X

ON BEHALF OF THE GOVERNMENT:	Direct	Cross	Red.	Rec.
Capt. M. D. Makane	3	66	82	--

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2

3 THE COURT: Who is your next witness?

4 MR. DEPADILLA: Captain Mahadeo Makane.

5 CAPTAIN MAHADEO D. MAKANE, called as a witness,  
6 having been first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. DEPADILLA:

9 Q. Please state your name for the record, sir.

10 A. My name is Captain Mahadeo D. Makane.

11 Q. And where are you from, sir?

12 A. I am from India.

13 Q. Do you have a family?

14 A. I have a family. I have a wife and two daughters and a  
15 son.

16 Q. And how old are your children, sir?

17 A. My eldest daughter is 20 years old, my next daughter is  
18 18 years old, and my son is 13 years old.

19 Q. What is your occupation?

20 A. I'm a captain in the Merchant Navy.

21 Q. And who was your employer back in May of 2010?

22 A. My employer was Oil Sea Mumbai.

23 Q. How many ships have you captained over the course of your  
24 career?

25 A. I have captained over seven ships over the course of my

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1 career as captain.

2 Q. And generally, Captain, where have you traveled on  
3 merchant ships?

4 A. In merchant ships I have traveled all over the world.

5 Q. Were you in charge of the Marida Marguerite in May  
6 of 2010?

7 A. Yes, I was in charge. I was the captain of the Marida  
8 Marguerite.

9 Q. And where did you board the Marida Marguerite?

10 A. I boarded the Marida Marguerite on 29th of April at  
11 Mumbai.

12 Q. Tell the jury who were your senior officers?

13 A. My senior officers were Chief Engineer Oleg, Chief  
14 Officer Ikbar and First Officer Engineer Kahn.

15 Q. And who was your second officer?

16 A. My second officer was Sunsue Pandey.

17 Q. Directing your attention to May 8th, 2010, where were you  
18 traveling at that point?

19 A. Please repeat, sir.

20 Q. Where were you traveling on May 8th, 2010, on the Marida  
21 Marguerite?

22 A. May 8, 2010, we were in the Gulf of Aden, and we were  
23 headed for Suez, and our final destination was Europe, Port  
24 Rotterdam.

25 Q. What were you carrying on the ship?

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1 A. I was carrying chemicals on my ship; benzene, castor oil  
2 and other chemicals.

3 Q. How many people were on your crew?

4 A. I had a crew of 22 people on board.

5 Q. Did something out of the ordinary happen on May 8, 2010?

6 A. On May, 2008 (sic) my ship was hijacked in the Gulf of  
7 Aden when I was about 120 miles out of the Port of Salalah.

8 Q. And was that in international waters?

9 A. Yes, that was in international waters.

10 Q. Where was the first place you saw a pirate face to face?

11 A. The first place I saw the pirate face to face was on the  
12 bridge wing, on the starboard side. They came on the  
13 starboard side door.

14 Q. And what happened when the pirates came to the starboard  
15 side door?

16 A. When the came on the starboard side door they told me,  
17 "Open the door, open the door, or we will shoot." And I  
18 opened the door and allowed them inside.

19 Q. And what did they -- did they ask for anything at that  
20 time?

21 A. They asked all the crew to muster on the bridge, and I  
22 call for all the crew.

23 Q. Okay. And what did they ask for after that?

24 A. After that they told me to take the ship to Somalia.

25 Q. And what did you respond?

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1 A. I responded that I cannot take the ship to Somalia  
2 because I do not have the charts.

3 Q. What happened after that, Captain?

4 A. After that he physically abused me. He hit me on my face  
5 like this (indicating) and told me -- made it very clear that  
6 if I don't obey him I will be physically abused.

7 Q. How many pirates were on your ship at this point?

8 A. At this point there were about -- there were six pirates  
9 on board.

10 Q. And those initial six pirates -- how well could they  
11 speak English?

12 A. One of -- one of them could speak just working language  
13 of the English, like he had -- he could make us understand  
14 what he wanted, and the rest of the others were not so fluent  
15 in English.

16 Q. Okay. And after you had been assaulted by one of the  
17 pirates what did you decide to do?

18 A. I decided our -- I decided that I have to go to Somalia  
19 no matter how, and I have no choice, and if I don't go my  
20 life is at stake.

21 Q. Okay. And how did you know how to get to Somalia?

22 A. We have ocean charts, so we get a rough direction, but to  
23 go to a particular port or to go to a particular area we  
24 require large-scale charts. Those charts we did not have,  
25 and the pirates guided us through the satellite phone. They

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1 told us, "Okay, this is twelve o'clock, this is one o'clock,  
2 two o'clock, you head in this particular direction." With  
3 the satellite phones they guided us, and that's how we  
4 reached Somalia.

5 Q. Okay. What happened on the second day the pirates were  
6 on your ship?

7 A. On the second day the pirates were on the ship they were  
8 keeping watches continuously on us, and they were telling us  
9 not to move and they would keep on rotation. And they  
10 started looting us. They started taking all the valuables  
11 from us; mobile phones, cameras, our cash, personal cash  
12 which we had with us in dollars. Also, they started taking  
13 the clothes. They started looting us.

14 Q. What did they take from you personally, Captain?

15 A. They took from me the U.S. dollars which I had with me,  
16 the Indian currency which I had with me. Also, they took the  
17 cash of the ship, which is there for the working. And also  
18 they took my mobile phone, and all my personal things they  
19 have taken.

20 Q. How long did it take you to get to Somalia?

21 A. We were hijacked on the 8th, and around the 10th we  
22 reached -- about one and a half days it took us to reach  
23 Somalia.

24 Q. And where was your crew kept at that time?

25 A. The crew was kept on the bridge. All of us were on the

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1 bridge, except the engineers were allowed to keep watch in  
2 the engine room.

3 Q. And what happened as you arrived off the coast of  
4 Somalia?

5 A. We arrive on the coast of Somalia on the 10th of May  
6 Hafun Anchorage, and then we were waiting for other pirates  
7 to come on board.

8 Q. And when the pirates began to come on board how many were  
9 there?

10 A. Initially, there were at least about 50 to 60 pirates on  
11 board who came, and then these pirates -- they started  
12 looting the ship and also started looting the ship's  
13 property.

14 Q. And when the pirates came on board were they armed?

15 A. The pirates came on board with their AK-47s. They were  
16 armed.

17 Q. And let's go back real quick to the initial six that took  
18 your ship. Were they armed when they took your ship?

19 A. Yes, each pirate was armed with AK-47, and also they had  
20 some other weapons with them.

21 Q. And what were the other kind of weapons?

22 A. They had small guns. I don't know what is the name of  
23 the gun and what is the quality of the gun.

24 Q. Okay. And once you got to Somalia did there come a time  
25 that someone came on the ship that spoke better English?



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1 A. Yes.

2 Q. Okay. And did you later learn names for that person?

3 A. Yes. The name is Shibin Ali. His name is Shibin Ali.

4 Q. Okay. Do you see Shibin Ali in the courtroom today?

5 A. Yes, I see him there sitting (indicating).

6 Q. Okay. I need you to describe what he's wearing, sir.

7 MR. BROCCOLETTI: Judge, stipulate it's the  
8 defendant.

9 THE COURT: Let the record reflect he indicated the  
10 defendant.

11 Let's move along.

12 BY MR. DEPADILLA:

13 Q. How many months did you spend with the defendant, Captain  
14 Makane?

15 A. I spent about seven and a half months with the defendant.

16 Q. And where were you located on the ship when you  
17 interacted with him, mostly?

18 A. I was located on the bridge.

19 Q. And give the jury an idea. How often was the defendant  
20 on the bridge?

21 A. The defendant was on the bridge whenever he used to talk  
22 with the other pirates for consultation and whenever he  
23 wanted any information from us. And also in the evening time  
24 from -- when they are consulting the pirates on business he's  
25 there on the bridge until late hours.

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1 Q. And when you would see the defendant on the bridge with  
2 the other pirates what would he do?

3 A. They used to talk -- they used to consult, but we are  
4 very far away. We can only see them. They are talking and  
5 consulting, but I cannot hear because they're talking in  
6 Somali, also.

7 Q. Okay. Would you see them eat meals together?

8 A. Yes, they used to eat the meals -- sometimes they used to  
9 eat the meals -- they used to order the meals and talk, and  
10 they used to have the meals on the bridge.

11 Q. Who would prepare the meals for the pirates?

12 A. The Somali cook used to prepare the meals, and also the  
13 Indian cook used to prepare meals at times for the pirates.

14 Q. And the Indian cook was one of your crew members?

15 A. Yes, the India cook was one of my crew members.

16 Q. Did you see the defendant chew khat with the other  
17 pirates?

18 A. Yes, the khat they chew every day. Every day, and they  
19 are chewing in the nighttime.

20 Q. How would the defendant contact your company?

21 A. The defendant would contact my company on the satellite  
22 phone, and also through his mobile he used to contact the  
23 company, and through the fax machine.

24 Q. Okay. And could you overhear the defendant when he would  
25 talk to the company?

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1 A. When he used to talk loudly I could all hear him. If he  
2 wanted to talk something confidential he used to talk in low  
3 voice. At that time I could not hear him.

4 Q. And you said that sometimes the defendant would come on  
5 the bridge to ask you questions. What kind of questions  
6 would the defendant ask you in regards to the negotiations?

7 A. He would -- initially, he would ask me about the value of  
8 the ship, the value of the cargo, the number of ships the  
9 company has, and also the company portfolio, how many ships  
10 they have, where are their offices located, and how much  
11 worth is the company, how much worth is the ships, and how  
12 much ransom the company would be able to pay them.

13 Q. And when he was asking those questions was he asking you  
14 directly? Was he the only person standing there?

15 A. He asked for the cargo papers. He used to be there, and  
16 also other pirates used to be also there.

17 Q. All right. But when he was asking you for company  
18 information did it appear that he was translating for  
19 somebody else, or was he asking you directly?

20 MR. BROCCOLETTI: Objection, Judge. He can't  
21 testify how it appeared to him. He can say what he saw and  
22 what he heard, but an appearance is opinion and speculation.

23 MR. DEPADILLA: I can rephrase, Your Honor. That's  
24 not a problem.

25 BY MR. DEPADILLA:

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1 Q. You said the defendant had asked you those questions  
2 about the value of the ship and that. Prior to that did he  
3 talk to another pirate in Somali and then immediately ask you  
4 the question, or did he just ask you the question himself?

5 A. He took the cargo papers. He wanted to get the value of  
6 the ship. And other pirates and he were consulting so that  
7 they could arrive at the ransom amount, and that is why he  
8 was asking me.

9 Q. Okay. Now, would the defendant ever tell you to talk to  
10 the company?

11 A. The first contact he made with the company after he  
12 arrived and he told the company the ship is in his -- in  
13 their custody and he made contact with my DPA. At that time  
14 my DPA is Rajesh Shava, Captain Rajesh Shava, and he told  
15 them that they had to establish a point of contact and be  
16 with each other and the ransom amount and all the other, and  
17 they would call up later.

18 Q. And I'm asking, Captain, did he put you on the phone to  
19 talk to Rajesh Shava?

20 A. Yes, he told me to talk to Rajesh Shava first.

21 Q. And what did he instruct you before he put you on the  
22 phone to talk to Rajesh Shava?

23 A. He instructed me to talk -- that the ship is in charge of  
24 the Somali pirates and he has to be with Shibin Ali and they  
25 have to pay the ransom amount -- they have to pay the ransom

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1 amount, and the fuel and all is going to finish, and they  
2 must do it as fast as possible.

3 Q. Okay. Let's go to call 1-4 A on May 17th.

4 (The audio recording was played.)

5 BY MR. DEPADILLA:

6 Q. Who told you to say that?

7 A. Shibin told me to tell that.

8 Q. And did he tell you why he wanted you to tell that to the  
9 company?

10 A. He wanted me to tell that to the company so that the  
11 company will pay the ransom amount fast and will pay a huge  
12 ransom amount, what they were demanding.

13 Q. I'd now like to go further in that call 1-4 A on  
14 May 17th.

15 (The audio recording was played.)

16 BY MR. DEPADILLA:

17 Q. On May 17th, 2010, did any of the pirates threaten you by  
18 putting a gun to your head, as described here in this call?

19 A. No.

20 Q. Would that happen later in your ordeal on the Marida  
21 Marguerite?

22 A. That happened later -- that happened later -- that  
23 happened later on, when the pirates pointed a gun at me.

24 (The audio recording was played.)

25 BY MR. DEPADILLA:

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1 Q. Based on where you were kept on the bridge, could you  
2 tell how often the company would call?

3 A. The company would call initially weekly, then fortnightly  
4 and then monthly the company used to call.

5 Q. And did you observe -- what was the defendant's attitude  
6 towards picking up those calls? Were there calls he didn't  
7 pick up?

8 A. The defendant was arrogant towards the company picking up  
9 the phone. He would never respond, he would never pick up  
10 the phone, and he did not maintain a proper communication.

11 Q. Let's talk about the ransom negotiations.

12 Were you able to observe how the defendant came up  
13 with the initial ransom demand of the \$15 million?

14 A. The defendant asked for the cargo papers, he asked for  
15 the ship's value to me, and whatever the best of my ability I  
16 answered. The cargo values we really don't know. Also, he  
17 asked us how many ships the company has and where are the  
18 offices located. I could tell to the best of my ability, and  
19 also I made it very clear that I could not give him the  
20 current value of the ship and the cargo. Also he  
21 cross-checked with other crew members, and that's how he  
22 arrived at the ransom amount.

23 Q. And did it appear that any of your crew was helping him  
24 give information to use in those negotiations?

25 A. Yes. My second officer, Sunsue Pandey, was very much in

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1 touch with him, and he was giving him all the information.

2 And not only that, he was exaggerating the figures.

3 Q. And, so, how often would you see the defendant with  
4 Mr. Pandey?

5 A. Very often. Whenever he wanted to make any decision or  
6 arrive at a conclusion, he would consult Pandey.

7 Q. And did it appear that Mr. -- well, from your  
8 observations of Mr. Pandey, did you see if he had any extra  
9 privileges, compared with the rest of your crew?

10 A. Mr. Pandey had more privileges to that extent that he  
11 could make phone calls. He could -- during the hijackers'  
12 mission Pandey was free to move from anyplace to anyplace.  
13 Whenever Pandey wanted to contact him or speak to him or give  
14 him feedback he was to go to his cabin -- which he was  
15 staying in the chief officer's cabin, which is two decks  
16 below -- and was a free man to move about. He got phone  
17 calls. He also could contact his family and give them  
18 feedback of what is happening in India and the latest  
19 position of the company, what the company is saying to the  
20 families of the crew members.

21 Q. And how did Mr. Pandey use his new-found power?

22 A. He used the new-found power against the crew. He told  
23 the crew, "You have to follow me. You have to say whatever I  
24 tell you to do. If you don't follow me then I will say to  
25 the pirates that you are acting against them, and you will be

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1 tortured and punished."

2 Q. Did the defendant ever protect Mr. Pandey?

3 A. The defendant and Pandey were in league. They were  
4 always working together. They were always working together.

5 Q. Okay. Now, over the course of the hijacking did you and  
6 the chief engineer try to conserve the resources of the ship?

7 A. We -- myself and chief engineer always tried to conserve  
8 the resources of the ship. Only the machinery that was  
9 required was being run so that we could save the fuel oil or  
10 the fresh water. We tried to save as much as possible. We  
11 told everybody not to have their baths, not to wash their  
12 clothes. And the thing what we did was we squeezed on the  
13 walls. The pipeline that is supplying water were turned down  
14 so that less water comes and people will not waste water.

15 Q. And did you ever try to hide the amount of water from the  
16 pirates that you actually had?

17 A. No, we never tried to hide the amount of water. We  
18 always told them the exact figures -- exact figures --  
19 because it is very difficult to take the sounding if the ship  
20 is rolling. If two people take the same measure of the same  
21 amount of water, one will arrive at about 55 and another may  
22 arrive at about 58.

23 Q. Okay. Now, I want to talk about the May-to-August time  
24 frame of the hijacking. How often would you see the  
25 defendant during that period of time from May to August?



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1 A. From May to August we could see him regularly on the  
2 bridge talking to the other pirates and discussing things.

3 Q. And what would you observe them doing during that time  
4 frame when the defendant was with the other pirates?

5 A. When the defendant was with the other pirates his  
6 position was very high. The other pirates over him had  
7 respect for him and followed his voice.

8 MR. BROCCOLETTI: Just a moment. I'm objecting to  
9 this.

10 He doesn't understand Somali, and he has no clue as  
11 to what the two people were talking about, or the four  
12 people, or the six people. So the opinion he's rendering  
13 can't be based on anything he knows from his own personal  
14 knowledge.

15 THE COURT: The objection is overruled.

16 BY MR. DEPADILLA:

17 Q. Would you observe their body language when the defendant  
18 would speak to the other pirates?

19 MR. BROCCOLETTI: Judge, I'm objecting to this.  
20 Unless he's qualified as an expert, as a psychologist in body  
21 language, there's no way he can interpret that.

22 THE COURT: I'm going to allow him to testify as any  
23 layperson --

24 MR. BROCCOLETTI: Yes, sir.

25 THE COURT: -- as to the conduct between various

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1 individuals.

2 MR. BROCCOLETTI: Yes, sir.

3 THE COURT: Every individual judges, and you can  
4 judge constantly. And, so, consequently, I'm going to allow  
5 it, and your objection is overruled.

6 MR. BROCCOLETTI: Yes, sir.

7 THE COURT: However, you are right about body  
8 language, okay? You're not right about appearances.

9 MR. BROCCOLETTI: Yes, sir.

10 THE COURT: Okay.

11 BY MR. DEPADILLA:

12 Q. Would you observe him in constant contact with the other  
13 pirates having conversations?

14 A. Yes. They used to have constant contact with the other  
15 pirates. It is a known fact that in the evening they eat the  
16 khat and they all are together and discussing.

17 Q. Would you see the defendant laugh with other pirates  
18 during the night when they were chewing khat?

19 A. Yes. They used to have a very friendly chat and laugh  
20 and chit-chat.

21 Q. And when this was going on what were you and the chief  
22 and the first officer and the second engineer doing? Where  
23 were you?

24 A. We were kept on the port side of the bridge -- on the  
25 port side of the bridge. All four of us were on the port

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1 side of the bridge, and we used to be there 24 hours --

2 24 hours. That was our position.

3 Q. Where would you sleep?

4 A. We were sleeping on the bridge, on the bridge itself.

5 Q. On the floor of the ship?

6 A. Yeah, on the floor of the ship. We were given  
7 mattresses, and we had some bedding, and we used to sleep on  
8 the floor or -- on the floor itself.

9 Q. And how late would the pirates stay up with the defendant  
10 talking and chewing khat?

11 A. They used to chew khat and all up to midnight or more  
12 than the midnight time, also.

13 Q. Okay. Now, as you continued to observe the pirates were  
14 there some pirates that would come on board from time to  
15 time, revisit the ship more than once?

16 A. The routine was some of the pirates kept watch for one  
17 month, and they used to take a break and go ashore and then  
18 again come back. Some of them used to work for two months  
19 continuously. Some of them used to take off 15 days. It is  
20 very difficult for us to keep track.

21 At times they used to be on the bridge, at times  
22 they used to be down below, so we -- I cannot put the time  
23 frame, but sometimes we used to see the pirates.

24 Q. Okay. And did you have one pirate that you thought of as  
25 the investor or the leader who would come on the boat?

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1 A. Yes. One pirate was -- they themselves told us, the  
2 other pirates, that he's the main pirate, that he's the  
3 investor and he's the leading pirate.

4 Q. And who told you that that man who we're describing is  
5 the lead pirate?

6 A. The other pirates told us.

7 Q. Did you ever have conversations with the defendant about  
8 this lead pirate?

9 A. No, I did not. I specifically did not have any specific  
10 conversation about this man with the defendant.

11 Q. Okay. Describe the lead pirate to the jury.

12 A. The lead pirate was -- his age was about 50 to 55,  
13 well-built, strong build, and a man who you could fear with  
14 his eyes and very strong looks he had. And other pirates  
15 used to never go near him. They used to talk very few, and  
16 they stayed away from him from the period -- I can make out  
17 that he's somebody who is high in the hierarchy and who is  
18 controlling the decisions.

19 Q. Did you see him talk with the defendant?

20 A. Yes, many times.

21 Q. Okay. Would they eat meals together?

22 A. Yes, they had meals together.

23 Q. Did you see them chew khat together?

24 A. Yes, I saw them chewing khat together.

25 Q. Did you ever see this pirate we're describing as the

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1 commander hit the defendant?

2 A. No.

3 Q. Did you ever see this man we're describing as the leader  
4 spit on the defendant?

5 A. No.

6 Q. Did you ever see this man, the leader, torture the  
7 defendant?

8 A. No.

9 Q. During the May-to-August time frame what was the  
10 defendant focusing on when you observed him?

11 A. Please repeat, sir.

12 Q. We're still in May to August, that time frame. What  
13 would you observe the defendant doing with the company?

14 A. He was focusing on the ransom. He was focusing on the  
15 ransom amount, and in his talks the main talk used to be the  
16 ransom amount and the torture of the crew.

17 MR. DEPADILLA: I'd now like to play part of 1-15 A,  
18 which is call 57.

19 (The audio recording was played.)

20 BY MR. DEPADILLA:

21 Q. Did you see the defendant try and make your company pay  
22 less to get you guys back?

23 A. No, he never tried for less amount.

24 Q. And in those same months did it appear from your  
25 observations that the defendant was free to move about the

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1 ship?

2 A. Yes, he was free to move about the ship.

3 Q. What about to leave the ship?

4 A. He left -- he left the ship somewhere in the middle of  
5 July -- in the middle of July -- the first week of July to  
6 the middle of July. I can't recall those days exactly now,  
7 but sometime during that he did leave the ship for about a  
8 week's time to ten days' time.

9 Q. And when he came back did he have anything with him?

10 A. He had news from the internet what the second engineer's  
11 wife told -- the company gave to you about the ship. And he  
12 had some news, and also he tried to get some news from the  
13 Internet about the ownership of the company.

14 Q. How did he use crew members to get the company to pay  
15 more money, Captain?

16 A. He always monitored the crew members when they spoke with  
17 their families, and he tutored them what they must speak and  
18 what feedback they are giving, what feedback they must give,  
19 and do their best to get the best information about what is  
20 happening in India so they can get the maximum ransom amount.

21 Q. Did you ever see the defendant allow a crew member to  
22 talk on the phone without him directly monitoring that crew  
23 member as they spoke to their family?

24 A. Always, whenever the crew members are speaking, either  
25 the defendant or some pirate used to be there with the crew

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1 members. The crew members were never allowed a free call.  
2 That means nobody monitoring and they're allowed to talk  
3 freely.

4 Q. And were there any events you noticed that were happening  
5 in the hijacking when the defendant would let the crew  
6 tell -- talk to their families?

7 A. Please repeat. I did not --

8 Q. Okay. When you would be able to observe the defendant  
9 putting family -- putting crew members on the phone to call  
10 their families did you notice anything about what was going  
11 on in the hijacking at that time?

12 A. He -- as I told you, he used to tutor the crew and  
13 monitor the crew, and at that time the crew members are  
14 allowed to talk only what they wanted to talk and no more,  
15 nothing of their free will.

16 Q. Okay. Sir, were you tortured during ransom negotiations?

17 A. Yes, I was tortured.

18 Q. Okay.

19 MR. DEPADILLA: Mr. Samuels, can you try to hit  
20 "Escape" and see if this will come up? Great. Thank you.

21 I want to now play from call 1-22 A on June 4th.

22 (The audio recording was played.)

23 BY MR. DEPADILLA:

24 Q. Now, sir, this call is on June 4th of 2010. The  
25 defendant refers to "the beatings aren't happening all the

—Captain M. D. Makane - Direct—

1 time."

2 Were there any beatings going on in the June 4th time  
3 frame of the hijacking, to your knowledge?

4 A. During this time there were no beatings.

5 Q. So when did the torture begin for you, sir?

6 A. For me the torture began in the first week of July. The  
7 first torture which I faced was in the first week of July,  
8 sir.

9 Q. And what were the circumstances surrounding when this  
10 happened?

11 A. The circumstances were one of the ship's -- one of the  
12 skiffs of the fishing vessels came to ask for fresh water.  
13 They wanted to give fresh water to the skiff and to the  
14 fishing vessel so they can use that as the mother ship and go  
15 for catching other merchant ships. And we said, "We have  
16 water which is enough for us, but we do not have water to  
17 give it to the other ships." The pirates and the defendant  
18 did not listen to this, and they said, "You have to give. No  
19 matter what, you have to give water."

20 And we resisted. They blindfolded me and the chief  
21 engineer --

22 Q. Captain, I'm going to slow you down there, okay?

23 When you were having this conversation where you were  
24 refusing to give water to the pirates so they can turn it  
25 over to other ships who was talking to you? Who was there?



—Captain M. D. Makane - Direct—

1 A. The pirate commander and the defendant. They are talking  
2 to me.

3 Q. Okay. What do you remember the defendant saying during  
4 this conversation?

5 A. During this time the defendant was telling, "You" -- "No  
6 matter what, you have to give water to the pirates. You have  
7 to obey them. You may not have water, but you have to  
8 give" -- "you have to give water."

9 Q. Okay. And what was the commander doing during that?

10 A. The commander -- the commander did not listen to us, and  
11 they took us -- they blindfolded us, and they took us down.

12 Q. Okay. Where did they take you?

13 A. They took me and the chief engineer on the poop deck, and  
14 they blindfolded -- they blindfolded us.

15 Q. Okay. And so the jury understands, sir, where is the  
16 poop deck?

17 A. The poop deck is the deck which is at normal level with  
18 the cargo deck. Like in this case it is four stories down.  
19 Say on the 8th floor -- on the 8th, then after that 7, 6, 5,  
20 4, and that is the level of the ship where the cargo hatches  
21 are, and that's how it is there.

22 Q. All right. When you arrive on the poop deck who else is  
23 there from your group?

24 A. Along with me, the chief engineer is also there.

25 Q. And who was there from the pirates?

—Captain M. D. Makane - Direct—

1 A. From the pirates, the pirate commander Mohammad was  
2 there, the defendant was there, and also there were some  
3 other -- six, seven pirates were there.

4 Q. Okay. When was the last time you saw the defendant  
5 before you got to the poop deck?

6 A. Before they blindfolded me I saw him.

7 Q. And what was he doing?

8 A. He was with the other pirates.

9 Q. Okay. What happened when you got to the poop deck?

10 A. When I got to the poop deck they separated me and the  
11 chief engineer. For me, they took me on the port side, which  
12 is the left-hand side of the ship, and they took the chief  
13 engineer on the starboard side, which is the right-hand part  
14 of the ship, and in between the ship is separated with some  
15 working environment so that we cannot see each other.

16 Q. And what happened when you were isolated on that side of  
17 the ship?

18 A. When we were isolated, at that time they tied our hands,  
19 and with the hands they are taking the weight on the pipe,  
20 and then they are firing shots in the air to scare near us.  
21 And they're trying to scare so that the other person can feel  
22 that he's not dead and I can feel that the chief engineer has  
23 been shot and the chief engineer can feel that I have been  
24 shot. And they are doing this.

25 Q. And how long were you suspended by ropes?

—Captain M. D. Makane - Direct—

1 A. In the first torture it was nearly about one hour -- a  
2 half an hour to one hour we were suspended.

3 Q. And did anyone tell you the chief engineer was dead at  
4 that point?

5 A. Yes, "The chief engineer has told that there is water,  
6 and he's dead. And better you agree or we will kill you, we  
7 will kill you." Their intention was to scare us as much as  
8 possible.

9 Q. And when that torture period ended where did you go?

10 A. When that torture period ended I went to the -- I went to  
11 the bridge. They took us to the bridge.

12 Q. And who was on the bridge at that time?

13 A. On the bridge -- on the bridge it was other pirates and  
14 my crew member -- my two crew members, the chief officer and  
15 the first assistant engineer, Kahn.

16 Q. And did you see the defendant at that time?

17 A. The defendant? I cannot remember whether I had seen him  
18 or not at this particular time, sir.

19 Q. Okay. And after this period of torture which began with  
20 you refusing to give the water, did you and the chief change  
21 your position?

22 A. Yes, we changed our position. We had to give -- we had  
23 to give them -- we had to give them water.

24 Q. Okay. Now I want to come into this August time frame.

25 During that time frame, from your observations, did

—Captain M. D. Makane - Direct—

1 the defendant's position within the pirates change?

2 A. In the -- in the first of August the defendant's position  
3 changed with the -- his position changed with the pirates,  
4 and the pirates did not give him that respect which they were  
5 giving him before. And also he did not have the authority.

6 Q. Okay. And besides losing respect and authority -- where  
7 had he been staying before this time period?

8 A. Initially when he came on the ship he was staying on  
9 the -- in the chief officer's cabin, which is two stories  
10 below. And then in the August he was transferred to -- he  
11 was transferred to the bridge, and he -- he was staying just  
12 opposite -- opposite to us, and his bed and mattresses were  
13 also taken there.

14 Q. And how long did you see him sleeping on the bridge with  
15 you and your other three top officers?

16 A. It was about 15 to 20 days. From after August per week  
17 he was there on the bridge.

18 Q. And where did he go next?

19 A. The next he went -- he start -- after that he started  
20 operating like a normal pirate. He used to keep watches, and  
21 we could see him from the bridge -- it's difficult to see  
22 behind, but we could see him. When we stand in front of the  
23 bridge we can see what is there in the forward. We could see  
24 him keeping watches in the fo'c'sle, which is the forward  
25 side of the ship.

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1 Q. And when he was keeping watches on the fo'c'sle side of  
2 the ship was he armed?

3 A. Yes, he was armed. He was having a gun with him.

4 Q. Okay. And when you saw him when he had the authority,  
5 when he was the negotiator, was he ever armed then?

6 A. Please repeat, sir.

7 Q. I understand. Bad question.

8 When he was the negotiator did you ever see him with  
9 a gun?

10 A. When he was the negotiator he was never with a gun.

11 Q. Okay. Now at this time, when the defendant has been  
12 demoted to a pirate guard, did your ship move?

13 A. At that time -- at that time, in the first week of  
14 August, around -- after maybe second or third of August the  
15 ship has moved to Hobyo Anchorage.

16 Q. And what happened in Hobyo, Captain?

17 A. In Hobyo other commander has taken over, and they are  
18 telling us that, "Now the situation has gone out of hand.  
19 Your company is not agreeing to the demands, and they will  
20 hand over the ship to Al-Shabaab" -- which is a terrorist  
21 organization of Somalia -- "and at that time they will kill  
22 you, each one of you, one by one, and they will pay us the  
23 ransom amount."

24 Q. And while that was going on did you observe a call that  
25 was made to the company?

—Captain M. D. Makane - Direct—

1 A. Yes. One call was made by this newcomer, so-called  
2 newcomer, Commander Osman, to the company.

3 Q. And when -- all right. So let's -- could you look at the  
4 computer screen? I'm going to play from 1-38 A, which was on  
5 August 5th of 2010.

6 MR. DEPADILLA: Can you "Escape," Mr. Samuels,  
7 please.

8 (The audio recording was played.)

9 BY MR. DEPADILLA:

10 Q. Who told you to say all that stuff?

11 A. I was told by the defendant to tell all this.

12 Q. And in that call you said that the defendant was detained  
13 or under arrest. Where was he during this call?

14 A. During this call he was on the bridge. He was just next  
15 to me.

16 Q. And what was he doing during this call when you were on  
17 the phone?

18 A. He was tutoring, and also he was laughing, and he was  
19 telling what is to be -- he was monitoring and telling what  
20 is to be told.

21 Q. And can you explain to the jury who was he tutoring?

22 A. He was tutoring the new commander, Osman, who initiated  
23 the call.

24 Q. And during this time frame when the Al-Shabaab call  
25 happened was the defendant allowing crew members to call

—Captain M. D. Makane - Direct—

1 home?

2 A. Just maybe before this call, around this time, all of us  
3 made one call home, and they told us to tell our families  
4 that only we have 24 hours, and each crew member should tell  
5 their home that you have only 24 hours, and the family should  
6 go and persuade the company, and they must make the deal in  
7 this 24 hours; otherwise, we will be shot -- we will be shot.  
8 "Do anything, but make sure that the deal is being done in  
9 this 24 hours." That's what they told us to tell our  
10 families very clearly; that we have only 24 hours to live.  
11 That's what they told us to tell to our families, and most of  
12 the crew members, they called their families and told them  
13 they only have 24 hours to live.

14 Q. And, Captain, who specifically from the pirates did you  
15 see explain to the crew to make those calls?

16 A. The defendant.

17 Q. Okay. Let's turn to the second time you were tortured.  
18 What was the time frame of that?

19 A. I didn't understand you, sir.

20 Q. When was the second time you were tortured? You've  
21 already described the first incident. I would like to move  
22 to the second.

23 A. The second incident was again in the first week of August  
24 before we -- before we -- before we move to Hobyo.

25 Q. Okay. And what were the circumstances of it?

—Captain M. D. Makane - Direct—

1 A. The circumstances were, again, giving water to the  
2 fishing vessels who are used as mother vessels and who are  
3 going on a mission to catch merchant ships.

4 Q. Okay. And who were you having this conversation with  
5 before you were tortured?

6 A. We are again having the conversation with the defendant  
7 and the other pirates.

8 Q. Okay. And what other pirates were there?

9 A. I don't remember. It was something -- it was pirate Sagi  
10 and a few of the other pirates. They told us that we have to  
11 give water. And we were saying again that, "No, we don't  
12 have water, and our water was going down," but they were  
13 telling, "No, you have to give more water to them."

14 Q. And, Captain, what did you need that water for?

15 A. We need the water for our crew -- for our crew for -- we  
16 were preserving the water. We were not having baths, we were  
17 not having -- even for washing. We need the water for  
18 washing our plates, for cooking, and also for drinking. And  
19 not only us -- we are only 22 crew members -- but at times  
20 there were a hundred pirates also drinking the same water so  
21 that the consumption was more. And our water resources were  
22 going down and down and down, so we need water to survive.

23 Q. Okay. So let's go back to the conversation you're having  
24 with Sagi and the defendant. After you said you could not  
25 give more water what happened?



—Captain M. D. Makane - Direct—

1 A. After we told them we could not give water, this time  
2 there was more volatile, more volatile and more abusive.  
3 They took us down again on the poop deck, and they repeated  
4 the same procedure. But this time they were more abusive.  
5 More violence was there this time.

6 Q. What violence was there this time?

7 A. This time the more violence was that they lifted the  
8 chief engineer on the poop deck, again on the starboard side,  
9 they held him upside down, and they moved him like a beef up  
10 and down close to the water, the water or whatever they could  
11 reach.

12 And, for me, they tortured me. Again they tied me  
13 with my hands on the pipe, and again after that they released  
14 me. They tried to suffocate me with a bag on my face and for  
15 me holding the bag. I was suffocating, but somehow the bag  
16 got torn and I was saved.

17 And, also, they had a big knife, and they were  
18 telling that, "We are going to slaughter you, we are going to  
19 slaughter you. Now, you better tell the truth on the fresh  
20 water." And that's what they were telling. And again they  
21 were firing -- they were firing -- they were putting the gun  
22 on my head, on my head, and this is the worst moment. I felt  
23 as if I might die at any time.

24 Q. And was this directly after you told the defendant and  
25 Sagi that you could not give more water to go to pirate

—Captain M. D. Makane - Direct—

1 ships?

2 A. Yes, we -- after -- before -- immediately after that.

3 Q. Okay. Were you being asked questions about the amount of  
4 water you had at that time?

5 A. Yes, we told them -- we -- chief engineer was in charge  
6 of the fresh water, and chief engineer were giving them the  
7 figures.

8 Q. Were you asked about the fuel at that time?

9 A. Yes. At this time we were also asked about the fuel, and  
10 our answer was the same. Whatever figures we had we used to  
11 tell them.

12 Q. And how long did this period of torture go on for?

13 A. This torture went on for nearly two hours, and after this  
14 torture went on for two hours chief engineer was allowed to  
15 go on the bridge, and he give the water. And I was isolated.  
16 I was kept in isolation in one of the crew member's cabin for  
17 one full day.

18 Q. And when you were kept in isolation for one day did you  
19 talk to anybody?

20 A. I could not talk to anybody, only the -- some of the  
21 pirates came to question me -- to -- came to question me at  
22 that time.

23 Q. Okay. And after this period of torture did you have a  
24 conversation with the defendant about how the water was going  
25 to be monitored in the future?

—Captain M. D. Makane - Direct—

1 A. After I went on the bridge it was decided by the chief  
2 engineer, me and the defendant that we have to give the fresh  
3 water figure, how much fresh water is there, every day to the  
4 defendant, and we have to maintain a log that is in  
5 chronological order how much fresh water we have every day.  
6 We must give it to the defendant.

7 Q. Okay. Now I want to move to the beginning of September.  
8 In the beginning of September what resources were the pirates  
9 most concerned with?

10 A. In the first week of September the pirates are most  
11 concerned with fresh water, fuel and satellite phones,  
12 connections.

13 Q. And who asked you about satellite phone connections?

14 A. The defendant asked me about the satellite phone  
15 connections.

16 Q. And what did he want to know?

17 A. He -- we had two connections which we were using. One  
18 was on the bridge, and one was in my cabin. And also there  
19 was third connection but which was not in use, which was in  
20 the cargo control room -- which was in the cargo control  
21 room. And since that connection was not in use, we're not  
22 using. It was never in use on the ship.

23 Q. And did the defendant accuse you of calling out from one  
24 of those connections?

25 A. The defendant accused us that, "You are using the

—Captain M. D. Makane - Direct—

1     satellite phone from the cargo control room, and you are  
2     calling the company." Whereas, in the piracy period we never  
3     had freedom to move on our own. Even we used to go from the  
4     bridge either to the toilet or to have our food, and wherever  
5     we went one of the pirates used to accompany us. We did not  
6     have the freedom, so there was no question of using the  
7     phones.

8     Q. Did the defendant tell you why he was concerned that you  
9     might be using the cargo phone to call out from the Marida  
10    Marguerite?

11    A. The defendant has promised the pirates that he will be  
12    able to give them a huge ransom amount. And the dealings  
13    with the company were not moving as expected, so these  
14    pirates suspected, or the defendant suspected. And he was  
15    unsuccessful in his negotiations so he was trying to put the  
16    blame on the crew and on us and telling, "You are calling  
17    company and telling them that you have food to eat here, you  
18    are having everything, and that is why the company is not  
19    dealing with us and not coming up with ransom amount."

20    Q. I had trouble hearing you. Did you say that you had food  
21    to eat here and you were okay and that's why things were not  
22    coming up?

23    A. Yes.

24    Q. Okay. All right.

25             I'd now like you to look at the screen again, and

—Captain M. D. Makane - Direct—

1 we're going to be on 1-37 A, which is on August 2nd of 2010.

2 (The audio recording was played.)

3 BY MR. DEPADILLA:

4 Q. Who instructed you to say that to the company?

5 A. The defendant instructed me to talk this to -- talk this  
6 to the company. And during the piracy period we do not have  
7 any freedom to talk, freedom of speech or anything, so  
8 whatever the pirate is tutoring us, we are allowed to talk  
9 only that.

10 Q. And during that call you said that Ali was the one who  
11 was protecting you every step of the way.

12 Was that true, based on your observations, Captain?

13 A. No, it is not. It is not true.

14 Q. Okay. And you also testified that the defendant was  
15 concerned about you guys talking on the cargo phone. Tell  
16 the jury, did anyone manage to get a call out on the cargo  
17 phone?

18 A. Whenever -- nobody managed to get any call on the cargo  
19 phone because the pirates are moving and monitoring all the  
20 time. And nobody is foolish to make a call, because if any  
21 pirate catches you talking -- it is just that nobody is going  
22 to risk his life for just one phone call.

23 Q. During the first week of September did your situation  
24 change on the ship?

25 A. During -- when -- what I recall, first week of September

—Captain M. D. Makane - Direct—

1 is really I go in a trance. When I recall those days -- that  
2 first week of September was really horrible, and the most  
3 torture period happened in this first week of September.

4 Q. And how were you informed that you were going to be  
5 tortured in that first week of September?

6 A. Initially, the pirates started making cable ties and also  
7 started making ropes and also started -- "Okay, we will see  
8 you."

9 They asked the chief engineer about the fuel, and he  
10 replied to them that, "We don't have the fuel." "Okay, we  
11 will see you. Now we will see you." And we would see them  
12 preparing, but since the first time in Somalia we did not  
13 understand what they're doing. But we can make out from the  
14 language that they're conspiring, they're trying to do  
15 something, but we could never make out the -- we actually  
16 went for it.

17 Q. Okay. So when you're observing these preparations where  
18 are you?

19 A. We are on the bridge. We are on the bridge itself. We  
20 are on the port side of the bridge. We are there.

21 Q. And who is making these preparations?

22 A. These preparations are being made by Sagi, as I told, the  
23 financier, and other pirates are there. They are making this  
24 preparation.

25 Q. And where is the defendant?

—Captain M. D. Makane - Direct—

1 A. The defendant is also on the bridge at this time.

2 Q. And what is he doing?

3 A. He is talking with them. He is discussing with them.

4 Q. Okay. Did they eat at all when they were making these  
5 preparations?

6 A. I beg your pardon?

7 Q. Did they eat? Did they have a meal while they were  
8 getting this stuff ready?

9 A. Yes, they had the meal, and then they started making  
10 these preparations.

11 Q. Okay. Was the defendant chewing khat with the investor  
12 and the rest of the pirates at this time period?

13 A. Yes, the other pirates were making the preparations, and  
14 they were sitting on the starboard side in a line. The  
15 pirates -- the financier, the defendant and other important  
16 pirates were sitting, and they were chewing khat.

17 Q. And as these preparations continued what were you, the  
18 chief, the first officer and the second engineer doing?

19 A. As preparations continued they called us one by one. One  
20 by one they called us and then they told us the procedure to  
21 be followed. I can just elaborate.

22 They told us that we just stand -- they tied our  
23 hands behind, and then they tied our legs. And then they  
24 told us to sleep on the floor so that we are sleeping on the  
25 floor. Then the hands and the legs they have pulled together

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1 so the position of the body -- your hands outreached, your  
2 legs outstretched towards the hands, and your hands  
3 outstretched towards the legs -- you can't move.

4 And after that they are tying cable ties -- after  
5 that they are tying cable ties on the legs -- not only in one  
6 place but in two or three or four places -- and also on the  
7 hands they're tied. The position is very horrible, and you  
8 are not -- you are feeling cloistered; you can't move. You  
9 can't move. You are feeling as if life is going away from  
10 you. And the blood flow is also stopped. We are yelling, we  
11 are pleading for life, and we're telling them, "Please help  
12 us, please help us. What we're telling you is the truth and  
13 the truth." But nothing. They are not interested in people.  
14 They're having fun. They're chewing the khat.

15 At this particular time we're pleading with the  
16 defendant, "Please help us, please help us." And the  
17 defendant is saying, "Don't take my name, don't call on me,  
18 don't call on me." And they're laughing and they're enjoying  
19 this. I'm telling you, this is the worst period. You feel  
20 that life is going from you. You feel helpless. Your voice  
21 is -- becomes less. You don't even feel like talking or  
22 shouting at that time. Then you feel that the blood flow  
23 stops. When the cable tie is tied the blood flow stops. You  
24 feel your arms, and the blood reduces in your hands. They  
25 get immobilized. It's this sort of a thing.



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1           At this time you shout and shout, and then you know  
2           that you're helpless, that you can't do anything. You just  
3           take it lying down. You have to take it lying down. You're  
4           only waiting that maybe they release you or maybe not. But  
5           you are helpless, and you're just keeping quiet at that  
6           particular time. This incident I recall I really go in a  
7           trance. I really go in a trance, and I just pray to God,  
8           "Oh, God, help me do something when nobody is listening to  
9           you."

10           And this happened for about five and a half to six  
11           hours, and after that when we pleaded, when they said these  
12           people are going to die, that is the only time they have  
13           relieved us.

14           Q. During that time, Captain, did the defendant do anything  
15           at all to help you?

16           A. No, no, nothing, nothing. The defendant did not do  
17           anything at all during this particular time.

18           MR. DEPADILLA: Can we unpublish, Madam Clerk?

19           THE COURT: How long are you going to be?

20           MR. DEPADILLA: I still have a while, Your Honor. I  
21           apologize. I'm moving as quickly as I can. He won't be as  
22           long as Oleg, but I still need about -- I'm guessing about  
23           half an hour.

24           THE COURT: Well, in that case, we'll stop now and  
25           come back tomorrow morning.

—Captain M. D. Makane - Direct—

1 MR. DEPADILLA: Thank you, Your Honor.

2 THE COURT: Ladies and gentlemen, don't get up yet.  
3 You're going to go to the courtroom next-door. And it will  
4 be a different jury room that we're going to, and we won't  
5 move again, I assure you. And that will be the courtroom  
6 next-door, and it's called Magistrate Courtroom One.

7 So we'll start there tomorrow morning at 9:30.  
8 9:30 tomorrow morning, unless that's a problem for anybody.

9 See you tomorrow morning, then.

10 Everyone please rise while the jury retires.

11 (The jury withdrew from the courthouse.)

12 THE COURT: All right. You can have a seat a  
13 minute. You may step outside, sir.

14 What we're going to do is this evening you can  
15 transfer your stuff over to the other courtroom, if you  
16 desire, and we can get this set up over there for tomorrow at  
17 9:30 in the morning, and we can start promptly at 9:30.

18 MR. DEPADILLA: We'll be ready to go, Your Honor.  
19 No problem.

20 THE COURT: All right. No problem.

21 MR. DEPADILLA: Thank you.

22 THE COURT: Has the jury left?

23 THE CSO: No, sir. They're getting their things  
24 together.

25 THE COURT: All right. Just wait a minute.

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1 (There was a pause in the proceedings.)

2 THE COURT: In fact, you-all can start taking your  
3 stuff over there, if you want. You can go right through the  
4 witness room.

5 MR. DEPADILLA: We'll do that, Your Honor. We're on  
6 it. Thank you.

7 THE COURT: Mr. DePadilla, is the door open to the  
8 other room?

9 Mr. Samuels, just look and see if the door is open.

10 MR. SAMUELS: Yes, sir.

11 (There was a pause in the proceedings.)

12 (The proceedings adjourned at 5:00 p.m., to be  
13 reconvened at 9:30 a.m. on April 20, 2012.)

14

15 \*\*\*\*\*

16

17 (After adjournment on April 19, 2012, the testimony  
18 of Captain M. D. Makane resumed on April 20, 2012, as  
19 follows:)

20 THE COURT: Are you ready to proceed, Mr. DePadilla?

21 MR. DEPADILLA: Thank you, Your Honor. With your  
22 permission, we'll recall Captain Mahadeo Makane.

23 THE COURT: Please do.

24 You're reminded you still are required to tell the  
25 truth, the whole truth, and nothing but the truth.

—Captain M. D. Makane - Direct—

1           You may proceed, Mr. DePadilla.

2           MR. DEPADILLA: Thank you, Your Honor.

3                     DIRECT EXAMINATION (Continuing)

4 BY MR. DEPADILLA:

5 Q. Captain, I'd like to pick up where we left off last  
6 night, and I was going to show you some photographs.

7           MR. DEPADILLA: Can we unpublish, Madam Clerk?

8           THE CLERK: Yes, sir.

9 BY MR. DEPADILLA:

10 Q. Sir, could you take a look at 1-1 X, 1-1 Y and 1-1 Z.

11           Do you recognize those photos, sir?

12 A. I have seen these photographs 1-1 X, 1-1 Y and 1-1 Z.

13 Q. And when, approximately, were those pictures taken, sir?

14 A. These pictures were taken in Salalah when the German  
15 authorities and police came on board to investigate.

16 Q. And are those fair and accurate pictures of how you  
17 looked on that day when the German authorities were  
18 processing your ship?

19 A. That's exactly right, sir.

20           MR. DEPADILLA: Your Honor, we'd offer 1-1 X, 1-1 Y,  
21 and 1-1 Z and ask to publish.

22           THE COURT: 1-1 X, Y and Z are received in evidence,  
23 and you may publish the same.

24                     (The exhibits were admitted into evidence.)

25 BY MR. DEPADILLA:

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1 Q. Who is this a picture of, sir?

2 A. This is a picture of me.

3 Q. And you say this was taken after your captivity?

4 A. That is right, sir.

5 MR. DEPADILLA: Let's go to 1-1 Y.

6 BY MR. DEPADILLA:

7 Q. I'd like you to look where I'm making the red arrow.

8 What are these marks on your arm, sir?

9 A. These marks are off the cable ties which were tied to my  
10 hand.

11 Q. And approximately how many months after you were tied  
12 with cable ties were these photos taken?

13 A. I was tied in the month of September, the 6th and 7th,  
14 and these marks are in the month of January, 5th and 6th.

15 Q. And we'll look at 1-1 Z.

16 What is this mark we're looking at?

17 A. This mark is also of the cable ties and the rope. They  
18 tied me to the pole so that the skin is burned and there is  
19 damage to the tissues and to the nerves.

20 Q. Sir, tell the jury, do you still have nerve damage in  
21 your hands?

22 A. I still have the pain, and sometimes there is numbness  
23 and it's difficult for me to lift the hand.

24 Q. Do you have any damage with your legs?

25 A. I have damage with my knees, and sometimes when I'm there

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1 I'm limping and there is pain in the knees, sir.

2 Q. Now, sir, when we were leaving off last night you were  
3 describing what was happening to you on that night when you  
4 were tied.

5 Where I want to go to now is how did that session end  
6 of torture?

7 A. That session ended somewhere after mid -- somewhere  
8 around after -- after midnight. After midnight and during --  
9 after that session ended we really thought, this is the end  
10 of it, this is the end of it, but that was not to be so. And  
11 we thought at least now everything is over, but I refer to it  
12 that we have a rebirth. We have come from the depth and from  
13 the gallows we have come and escaped. Because, really, life  
14 was not in our -- there was no strength in my hands, no  
15 strength in my legs. I can only tell you this.

16 Q. And when the session was ending what did the defendant  
17 do?

18 A. When the session ended defendant was still there sitting  
19 and chewing khat and talking with the other pirates.

20 Q. Did you go to sleep at that time?

21 A. It is -- it is very difficult to sleep, and the horror  
22 and the experience was still alive, and I could not sleep the  
23 whole night.

24 Q. And when did the torture begin again, sir?

25 A. The torture again began in the morning, 7:00. They said,

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1 "We will torture you every day, morning, evening. Every day,  
2 morning, evening, every time we will keep on torturing you."  
3 And at 7:00 -- now this time the torture started and they  
4 took us to different locations. Earlier, on the previous  
5 night, we were on the bridge, all four of us, but now they  
6 separated us. They took two people on the bridge deck, which  
7 is on the top, monkey island, and they took me one deck  
8 below. And again the same procedure; they tied my hands  
9 behind and pulled me with the weight of the rope, my hands,  
10 and again the cable ties on my legs, again on my hands, and  
11 it is these marks which you have seen.

12 And I was again pleading with them, but this time I  
13 could not take the weight off my body. And there was no  
14 blood circulation, and I fainted. Only after I fainted they  
15 took me -- they took me off -- they took off the cable ties,  
16 untied the ropes, and then they splashed water on me, they  
17 gave me water to drink, and they called the crew. They were  
18 scared I was dead. And then they took me on the bridge -- on  
19 the bridge.

20 Q. Okay, sir. Which pirates took you to that lower deck to  
21 tie you up this time?

22 A. It was -- the only pirate's name which I remember is  
23 Budea. It is Budea.

24 Q. Okay. Was it just Budea, or were there other pirates  
25 with him?

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1 A. Budea, and another three pirates were there with him.

2 Q. And did you see the defendant that morning when you got  
3 taken for this session of torture?

4 A. The defendant -- I did not see defendant during this  
5 time. He was sleeping.

6 Q. Okay. And were the cable ties only placed on your arms  
7 and legs at this point?

8 A. Yes. Again, the cable ties were placed on my arms and my  
9 legs, again the same way as it was done in the previous  
10 night.

11 Q. All right. When you woke up on the bridge after being  
12 splashed with water, tell us what happened then.

13 A. After I woke up on the bridge I felt the numbness. I  
14 could not move my hand. I could not move my fingers. I felt  
15 as if my left hand was paralyzed, and I could not make any  
16 movement with my right hand, also. I felt my fingers numb.  
17 I could not move my hands, and also I felt the weakness in my  
18 legs. And I can say that there's no life in my hand. I did  
19 not even have the power to just turn my fingers in this way  
20 (indicating). Only I could do is -- I could just turn it  
21 this way (indicating).

22 Q. Are you being asked questions at that time after you have  
23 been woken up?

24 A. After I was woken up I was not asked any questions, no.  
25 When I was tied, at that time they were asking me questions.



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1 Q. And when you were tied what questions were you being  
2 asked?

3 A. They're asking me questions about fresh water, about the  
4 bunkers, and about the satellite phone connections.

5 Q. Were these the same questions the defendant had asked you  
6 the night before?

7 A. Yeah, the same questions.

8 Q. During all this period of time, Captain, did you change  
9 your answers?

10 A. My answers were consistent throughout.

11 Q. All right. On the deck you've just been woken up. How  
12 long is it until the next torture?

13 A. The next torture again started in the evening, around  
14 6:00.

15 Q. And who was present when this next session starts?

16 A. When this next session starts there is Budea, there is  
17 other set of pirate, Ahmed -- pirate Ahmed is there, then  
18 Sagi is there, and then the defendant are there. During this  
19 time they took off all my clothes and put me in the cold room  
20 where the meat is preserved. And the temperature is minus,  
21 and very, very low temperature is there.

22 Q. All right. So were all those pirates you just named --  
23 they all went to the freezer with you?

24 A. Yes. In the freezer room there is a compartment which  
25 separates -- there is a passage, and after that there is a

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1 door in the freezer room. All these persons were in the  
2 passage, and they just opened the door and pushed me inside  
3 the freezer room.

4 Q. Were you trying to talk to anyone at that time?

5 A. I was trying to talk to the defendant. At that time I  
6 was telling him, "What I am telling is the truth and the  
7 truth, and this is the truth."

8 Q. And what did the defendant reply to you before you went  
9 into the freezer room?

10 A. The defendant replied that, "You are not telling them the  
11 truth. You are not telling them the truth. You admit" --  
12 "You tell them that you have bunkers." But I said, "No, we  
13 don't have bunkers, and I cannot do anything about it."

14 Q. How long were you frozen for, sir?

15 A. I was frozen in time slot of 15 to 20 minutes. I was  
16 kept inside, and when they saw that I was shivering and I  
17 could not bear the shiver they used to put me out. And on  
18 the inside they had put ice also in my underwear for some  
19 time. After that they had removed my underwear, and they  
20 have tied cable ties around my private parts, and they are  
21 pulling on my private parts. And the pain is really  
22 unbearable. I'm telling them, "Don't do this, don't do  
23 this," but they're not listening to me.

24 Q. And who are you calling out to when they're pulling on  
25 your private parts?

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1 A. I was calling out to the defendant. And I was also  
2 calling the other pirates, but mainly the defendant I was  
3 calling.

4 Q. And what did the defendant say while you were calling out  
5 to him?

6 A. The defendant is not ready to listen. He's not really  
7 listening; he's just smiling and looking the other way.

8 Q. Did they continue to tighten the cable ties on your  
9 private parts, sir?

10 A. Yes. They did this for nearly one hour. It was a  
11 session of 15 minutes inside, they used to pull me out for  
12 five minutes, and again they used to push me inside.

13 Q. When did it stop this time, sir?

14 A. This time it stopped after one hour.

15 Q. Okay. During that entire time did the defendant do  
16 anything to help you or stop it?

17 A. The defendant did not try to stop or try to intervene.

18 Q. Where were you taken next?

19 A. Next, from here I was taken on the bridge -- that is, on  
20 the evening of 7 September.

21 Q. All right. Did the torture come to an end around this  
22 time?

23 A. Once I was taken up, then I had the pain. And I could  
24 not move, and I was just lying down. Temporarily, for that  
25 particular moment -- for that particular moment, for that

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1 particular night, it was -- it was over.

2 Q. Okay. And what happened the next day?

3 A. The next day I was taken to one of the crew member's  
4 cabin, and there I saw another negotiator, another new person  
5 who I was seeing for the first time and whose name I gather  
6 was Leon after some time -- after some time.

7 And he asked me again the same questions about the  
8 bunkers, the fresh water and the satellite phone connections.  
9 I also gave him consistently the same answers, and he was not  
10 ready to believe me. And he asked me, "Why is the company  
11 not raising the ransom amount? You need to call the company.  
12 And the company is in touch with you, and you're telling the  
13 company you have food to eat here and you have the bunkers.  
14 That's why the company is not coming."

15 And he's telling me that he's going to kill me and  
16 he's going to take me ashore, and I was insisting -- I was  
17 breathing, but I did not listen. I did not have any power in  
18 my hands to catch a ladder or catch a rope, and on the ship's  
19 side they tied a ladder and made me climb down. I didn't  
20 have any power to grip with my hands, but -- I don't know.  
21 When I recall at this time that God -- he has saved me that  
22 particular day. I was thinking I'm going to fall down, I  
23 don't have the power to grab the rope and go down, but  
24 somehow I went down.

25 They took me on a ship -- a small boat which is

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1 about a hundred meters from the ship, and they have put me in  
2 the boat. And I was sitting there, and they told me -- they  
3 threatened me that they will take me ashore and kill me.

4 Q. And when Leon became your new negotiator and you were  
5 being taken off the boat did you see the defendant at that  
6 time?

7 A. At this particular moment I did not see the -- I did not  
8 see the defendant.

9 Q. And how long were you kept in that boat, Captain?

10 A. I was kept in that boat for nearly about two hours.

11 Q. What happened after that period of time?

12 A. After this period, after I was in the boat, after about  
13 half an hour I saw the chief engineer also coming. And the  
14 chief engineer also asked the same questions, and then he  
15 also replied the same. He was also told that, "We will take  
16 you ashore. We are already taking the master ashore; we will  
17 take you also ashore." And they told the chief engineer,  
18 "We're going to take both of you, and we're going to kill  
19 you." And he was also told to come in the boat. And both of  
20 us were sitting in the boat and chief engineer was there with  
21 me for, again, half an hour to 45 minutes, and after that he  
22 was taken back on the ship.

23 Q. Did you change any of answers that you told Leon from the  
24 answers you told the defendant previously in what you  
25 described?

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1 A. The answers I told them were the same.

2 Q. When you got back to the boat where did you go?

3 A. After -- after I got back to the boat they blindfolded me  
4 and took me to a cabin on -- which was one deck above the  
5 poop deck where we were taken in the boat, and here what they  
6 said to me was -- they isolated me. They got a chain, a  
7 small chain. One end of the chain -- they tied it to the  
8 chair, and the other end -- they tied it around my hand like  
9 I am sitting now. You can imagine one end of the chain tied  
10 to the leg of the chair and the other is on my left hand so  
11 that I'm unable to -- I'm unable to move. And if I have to  
12 move I have to take this chair and then only move.

13 MR. DEPADILLA: Madam Clerk, may we unpublish,  
14 please?

15 BY MR. DEPADILLA:

16 Q. Sir, I'd like to show you a photo.

17 MR. DEPADILLA: I'd like to show the witness  
18 Government's Exhibit 1-1 W.

19 BY MR. DEPADILLA:

20 Q. Do you recognize that photo, sir?

21 A. Yes, I recognize this photo, Exhibit 1-1 W or "whiskey,"  
22 and it is the same chain which I was tied with.

23 MR. DEPADILLA: I would offer 1-1 W, Your Honor, and  
24 ask to publish.

25 THE COURT: 1-1 W is received in evidence, and you

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1 may publish it.

2 (The exhibit was admitted into evidence.)

3 BY MR. DEPADILLA:

4 Q. Captain, how long were you chained to that chair?

5 A. I was chained to this chair from September 8 to  
6 September 28.

7 Q. And how did you go to the bathroom?

8 A. I had to lift my -- I had to lift my chair with my hands,  
9 with my hands like -- I have to pull this chair, I have to  
10 carry it, and then only I can go to the bathroom.

11 Q. How did you sleep, Captain?

12 A. I sleep -- I slept -- I used to take this chair next to  
13 the bed, and I used to sleep with my one hand tied to the  
14 chair, and on the bunk I used to sleep.

15 Q. Now, when you were isolated down in this cabin would the  
16 defendant visit you?

17 A. Yes, the defendant had visited me the next day and the  
18 previous and the next; that is, on September 9th and  
19 September 10th he visited me.

20 Q. Tell the jury, what did you and the defendant talk about  
21 at that time?

22 A. The defendant told me, "You tell them" -- "admit them the  
23 same questions you're asking me again and again," and also  
24 he's prompting me, "You tell them," and, "Why you not telling  
25 them? You admit, and we will release you. If you don't

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1 admit, then you are going to die."

2 Q. And when the defendant is telling you these things is he  
3 the only one in the room?

4 A. No, he's with other pirates. Especially he's with pirate  
5 Sagi and sometimes with pirate Budea.

6 Q. Would Leon come to visit you in that room?

7 A. Leon came only initially when I was tied the first day,  
8 and then on September 27 he has come and visited me.

9 Q. And what did you talk about with Leon?

10 A. Leon told me that, "I'm the new" -- on September 27th he  
11 told, "I'm the new negotiator, and now on I will be doing the  
12 proceedings. And the pirates wanted to kill you, and they  
13 wanted to shoot you. It is I who have saved your life."

14 Q. Eventually were you let out of the cabin where you were  
15 chained to the chair, sir?

16 A. Before 28th this pirate Sagi came to the cabin, and then  
17 they could not find the key for the lock. Then they came  
18 from the engine room and cut it and I was released from the  
19 chain, and after that I was taken on the bridge.

20 Q. So after you were cut out of the chair and you got to the  
21 bridge what did you see? Who was there?

22 A. I saw that all the crew members are there on the bridge.

23 All of the crew members have been shifted on the bridge.

24 Earlier the crew members were staying in the cabin which was  
25 one deck below -- which was one deck below, and when I went I



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1 saw all the crew members had been brought up on the bridge,  
2 and they were staying on the bridge.

3 Q. And when Leon was the negotiator over that period of time  
4 how often would you see him?

5 A. Leon -- I could see him very, very rarely; maybe at least  
6 only about five or six times he was there on the bridge, on  
7 the bridge and on the ship.

8 Q. And would you see the defendant from time to time?

9 A. Yes, I could see the defendant also from time to time.

10 Q. And when you saw him where was he?

11 A. The only place I could see him was when I was on the  
12 bridge because that was my stay on the bridge, or I have been  
13 to the eating -- that is, in the mess room.

14 Q. Okay. Did you have conversations with the defendant at  
15 that time?

16 A. The defendant used to speak -- used to speak sometimes  
17 and tried to give us the feedback, or he used to try to take  
18 the feedback of what is happening -- what is happening  
19 around.

20 Q. And what kinds of questions would he ask you?

21 A. He would ask the questions, "What was the deal? How is  
22 the deal going on? So you'll be released very soon. So  
23 you'll be going home." These are the questions he used to  
24 say.

25 Q. Okay. And when you saw the defendant during this period

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1 of time when Leon was the negotiator, was he still talking  
2 with other pirates?

3 A. Yes, he was still talking with the other pirates, and he  
4 used to talk them -- talk with them.

5 Q. Did you see him take meals with the other pirates at that  
6 time?

7 A. Yes, he was taking meals with the other pirates.

8 Q. Did he chew khat with the other pirates at that time?

9 A. Yes, he used to be on the bridge, and he used to chew  
10 khat with the other pirates.

11 Q. All right. Now, did there come a time, Captain, when it  
12 appeared that both Leon and the defendant could have been the  
13 negotiator?

14 A. It was somewhere in the month of October to November.  
15 There was a time when it was not clear -- it was not clear  
16 for the company who to deal with. Because Leon was also  
17 claiming that he's the negotiator, and Ali -- he was also  
18 claiming to be the negotiator.

19 Q. Okay, sir. Can you look at your screen? I'm going to  
20 play a portion of call 1-60 A, which was on November 1st,  
21 2010.

22 (An audio recording was played.)

23 BY MR. DEPADILLA:

24 Q. Which pirate negotiator put you on the phone to talk with  
25 Mike at that time?

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1 A. This phone conversation has taken from a cell, and Leon  
2 has put me on a conference call with himself, Mike and me,  
3 and he has used the phone. He has told one of the pirates to  
4 give his cell phone to me, and this is a conversation from  
5 the cell phone and not from the satellite phone.

6 Q. And did Leon --

7 A. And Leon record this call. He called me up on the cell  
8 phone of the pirate Sagi, and then he instructed me that I  
9 must tell Mike that he's the negotiator and he has to deal --  
10 Mike must deal with him only.

11 Q. And had there been other times when the defendant had put  
12 you on the phone to talk to the company's negotiator to say  
13 that he was the pirate negotiator in charge at the time?

14 A. He and the other pirates were negotiating and talking,  
15 and there was a talk -- the pirates were telling Ali is  
16 coming back as the negotiator. And there was one call which  
17 we made from my cabin, which is one deck below the bridge,  
18 and from there we had made one call, and I have told Mike  
19 that now Leon is not the official negotiator and Ali has been  
20 appointed as the negotiator by the commander. There is one  
21 especially call which is made from the satellite phone. I  
22 cannot recall the date.

23 Q. That's okay, Captain.

24 And during the first week of December in 2010 did  
25 Leon give you an idea of what the status of the ransom

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1 negotiations were?

2 A. During those times Leon did give an indication that,  
3 "Definitely you will be celebrating Christmas in your home,  
4 and the deal is nearly finished." He had told us this. "And  
5 only a very few, a small amount, has to be sorted out, and  
6 after that amount is sorted out you will be released," he has  
7 told. But he has not indicated any figures to me.

8 Q. All right. I now want to play a portion of call 787  
9 which is 1-64 A, on December 8 of 2010.

10 (An audio recording was played.)

11 BY MR. DEPADILLA:

12 Q. Who put you on the line to say that, Captain?

13 A. The pirate Budea and defendant put me online to say this.

14 Q. And was that after Leon had already told you that the  
15 deal was about done and you were going home for Christmas?

16 A. That is right.

17 Q. Let's go to an earlier part of that call.

18 (An audio recording was played.)

19 BY MR. DEPADILLA:

20 Q. When you were making this call with the company and the  
21 defendant was Leon present on board?

22 A. No, Leon was not present on board.

23 Q. And normally when Leon was not present on board would the  
24 defendant still be talking with the other pirates?

25 A. Yes, the defendant used to talk with the other pirates.

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1 Q. Would he still be using khat and having meals with them  
2 at that time?

3 A. The defendant used to talk with the other pirates. Only  
4 when he's on the bridge I can see him, but when he is down  
5 below and -- when he's down below out of my sight, those  
6 portions I cannot tell -- I cannot communicate -- I cannot  
7 tell on that because I'm not there. I'm only restricted on  
8 the bridge.

9 Q. I understand that, Captain. Did the defendant come back  
10 and be the negotiator after this call?

11 A. Yes. That is, after December 8, and when we made the  
12 call to Mike from my cabin, which is one deck below the  
13 bridge deck, then the defendant was the official negotiator,  
14 and he was dealing with Mike.

15 Q. And did he ever tell you how Leon came to not be the  
16 negotiator anymore?

17 A. No, he did not discuss Leon with me.

18 Q. Okay. How much longer did it take the defendant to wrap  
19 up the negotiations?

20 A. December 8th he came back, and by December 22nd, 23rd,  
21 the deal was almost final and there was a talk of dropping  
22 the money and releasing the ship.

23 Q. Captain, were you released before Christmas, as Leon had  
24 talked to you about?

25 A. We were not released before Christmas.

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1 Q. Now, once the defendant had settled the ransom amount can  
2 you describe to the jury how his demeanor changed?

3 A. Could you please explain?

4 Q. Did he treat you any differently once the ransom was  
5 settled?

6 A. No, he did not treat me any different -- any different --  
7 any differently. His attitude was the same as before. He  
8 was acting in a very arrogant -- he was still acting in a  
9 very arrogant manner. When the phone was ringing on December  
10 24th -- because earlier we were supposed to be leaving on  
11 December 25th, and the procedure that we discussed -- the  
12 defendant never came back to pick up the phone. The phone  
13 used to ring at least a couple of times, about five or six  
14 times, but the defendant was not ready to communicate with  
15 the company.

16 Q. I ask you to turn to the screen again, Captain. I'm  
17 going to play part of call 967, which was on December 26.

18 (An audio recording was played.)

19 BY MR. DEPADILLA:

20 Q. Where was the defendant when you were saying this on the  
21 phone, Captain?

22 A. When I was telling this on the phone and talking with  
23 Mike the defendant was just near me, and he has tutored these  
24 words, put them in my mouth and told me to tell him to do  
25 something for him and speak to Mike about it.

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1 Q. Did he tell you why he wanted money from the company for  
2 doing the negotiations?

3 A. He said that the company wants to take care of him, and  
4 he was expecting a gift from the company; that is, in terms  
5 of money -- in terms of money from the company for  
6 negotiations.

7 Q. Captain, you viewed the defendant and the other pirates  
8 for eight months. Other than Pandey, did he protect anyone  
9 else on the ship from your crew?

10 A. To the best of my knowledge, he has not protected anyone  
11 else.

12 Q. And when the ransom was finally negotiated did the  
13 defendant have a conversation with your crew about  
14 Mr. Pandey?

15 A. When the deal was -- when the deal was really fixed he  
16 came up -- Pandey and he came from down below, and he gave a  
17 lecture to the crew that, "Do not treat Pandey as a traitor.  
18 He has cooperated very well with us, and due to his  
19 cooperation you must not treat him like the traitor, you must  
20 forgive him." And that is what he told to all the crew.

21 Q. Now I want to move to the very end of the hostage  
22 negotiation situation. When the ransom was going to be paid  
23 how many pirates came on your ship?

24 A. There were more. All the pirates who were supposed to  
25 get the payment came on board. There were more than about

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1 120, 125. More than 120 pirates were on board that day.

2 Q. Were they armed?

3 A. Most of the pirates were armed.

4 Q. And what were they armed with?

5 A. They were armed with AK-47s.

6 Q. Did you see the defendant during that time period when  
7 the ransom was going to be paid?

8 A. Yes, defendant was there on the bridge, and defendant was  
9 interacting with me and Mike, and he used to pick up the  
10 phone calls.

11 Q. All right. Were there times when he was not on the  
12 bridge during this ransom process?

13 A. Yes, there were also times he was not conveniently on the  
14 bridge, and during those times he was down below with other  
15 pirates or he was in the cabin.

16 Q. Please turn to the screen. I'm playing a portion of call  
17 975, 1-81 A, on December 27th.

18 (An audio recording was played.)

19 BY MR. DEPADILLA:

20 Q. Was the defendant present when you were able to make this  
21 call?

22 A. The defendant was not present, and definitely his  
23 presence -- if I made this call he would kill me.

24 Q. And were there other pirates present, though, when you  
25 made that call?



—Captain M. D. Makane - Direct—

1 A. The other pirates were there, but they were already away  
2 from me.

3 Q. And did the defendant return after you made this call to  
4 the bridge?

5 A. The defendant came on the bridge -- came on the bridge,  
6 but he never knew -- I was allowed to pick up the phone, and  
7 I had talked to Mike when he had made me. I was given the  
8 liberty that I can pick up the phone and speak. This was on  
9 December 26th. This would be on December 26th.

10 Q. And did the defendant, when he came back on the bridge,  
11 ask you what you had been talking to Mike about when he was  
12 not present?

13 A. Yes, he did ask me, because the pirates, other pirates,  
14 told him -- they are there, so it was the bunkers and it was  
15 about the other ship, also. I have talked to Mike, and I  
16 told him -- I told him about the bunkers and about the armed  
17 guards must be there. That is what I have told him.

18 Q. Did you see the defendant with any money around this  
19 time, as the ransom was being paid off?

20 A. The ransom was paid on December 27th, and after that he  
21 has come on -- he has come on the bridge to talk to the crew  
22 and all. I have seen a small -- I have seen a small bag --  
23 the length is approximately this much (indicating), and the  
24 size is this much -- with him.

25 Q. All right.

—Capt. M. D. Makane - Cross—

1 MR. DEPADILLA: Indicating for the record, Your  
2 Honor, a package that appears to be approximately one foot in  
3 width by one foot in height.

4 THE COURT: Let the record so reflect.

5 BY MR. DEPADILLA:

6 Q. Did the defendant make a speech to your crew before he  
7 left, sir?

8 A. Yes, when on the 28th of December he left, he made a  
9 speech to the crew saying, "You definitely will not like me  
10 to see you again, and I hope you don't like to see me." Most  
11 of the crew members told that they definitely wouldn't like  
12 to see him again. And he said, "If you see me you will hate  
13 me, and if you remember you will be hating me." That is very  
14 true.

15 Q. Who was the last pirate to leave your ship, Captain?

16 A. The last pirate to leave is Shibin and Faraad and one  
17 more pirate.

18 Q. Did the defendant say anything to you personally when he  
19 stepped off your ship for the last time?

20 A. This is what he told me: He said, "You wouldn't like to  
21 see me again."

22 MR. DEPADILLA: No further questions, Your Honor.

23 THE COURT: Mr. Broccoletti.

24 CROSS-EXAMINATION

25 BY MR. BROCCOLETTI:

—Capt. M. D. Makane - Cross—

1 Q. Captain, I'm going to ask you some questions, okay?

2 A. (No answer.)

3 Q. Now, as I understand it, when the first pirates boarded  
4 the ship there was one of them that spoke limited English.  
5 Is that true?

6 A. That is true.

7 Q. But you had a great deal of difficulty communicating with  
8 him?

9 A. As I said, he spoke only limited English. We could not  
10 communicate the proper way with him.

11 Q. Did he attempt to make any phone calls to the company?

12 A. He did not make any attempt to call the company. During  
13 this time when the first ten pirates were there on board they  
14 have not made any calls to the company, but if they had used  
15 the satellite phone -- because we were there on the port  
16 side, and the phone is there on the starboard side. That is,  
17 one -- one -- one is on the -- we were there on the left-hand  
18 side, and the phone is there on the right-hand side. If they  
19 had made a call I have not seen or I have not heard of it.

20 Q. In fact, you had sent an e-mail to the company, though,  
21 that the ship had been attacked and/or seized.

22 A. E-mail is sent to UK that the ship is under attack, and  
23 the position is given. And I had made phone call before the  
24 ship is hijacked to the UK and to Mumbai and to my company.

25 Q. Now, when the ship was brought into Somali waters and

—Capt. M. D. Makane - Cross—

1 anchored did additional pirates board the ship?

2 A. Please repeat, sir.

3 Q. Sure. When the ship arrived in Somalia and anchored off  
4 its coast did additional pirates board the ship to serve as  
5 guards?

6 A. No, sir. These guards came in Hafun Anchorage, which was  
7 first point of contact in Somalia. The other pirates came  
8 only in Garaad Anchorage, which is after May 16th or 17th,  
9 somewhere around that time, and which these pirates had come  
10 on board.

11 Q. So you had stopped before you got to Garaad?

12 A. Yes, we had stopped before we came to Garaad. That was  
13 at Hafun Anchorage.

14 Q. And how many pirates boarded the ship at that time?

15 A. In Hafun Anchorage no pirates came on board.

16 Q. Why did you stop there?

17 A. I had no power to stop. My hands were --

18 Q. I'm not suggesting that it was your fault, I'm just  
19 asking why, if you know.

20 A. I don't know, because I --

21 Q. All right. That's fair.

22 All right. Then you got to Garaad, and that's when  
23 the additional pirates boarded as guards, correct?

24 A. That is right.

25 Q. How long were you anchored before you saw Shibin?

-----Capt. M. D. Makane - Cross-----

1 A. We were anchored at least about five to seven days before  
2 I saw Shibin.

3 Q. Now, you called him "Shibin." You called him "Shibin  
4 Ali"?

5 A. I called him "Shibin."

6 Q. And is that how he introduced himself to you?

7 A. Yes, that is right.

8 Q. Did you ask him anything about his background, his  
9 history, his family?

10 A. I did not ask him -- I did not ask him any of his  
11 background or anything.

12 Q. So after you met him as "Shibin" you would see him on the  
13 bridge, correct?

14 A. That is right.

15 Q. You would see him on the bridge during the daytime?

16 A. During the -- whenever he wanted to come on the bridge,  
17 whenever he wanted to contact me or have any information he's  
18 to come. And at that time he was allotted the chief  
19 officer's cabin, so he was staying in the chief officer's  
20 cabin.

21 Q. I'm sorry. I didn't understand you. I apologize.

22 A. Each crew member is allotted a cabin to stay on the ship.

23 Q. Right.

24 A. So he was staying in the chief officer's cabin, which is  
25 two stories down from the bridge.

—Capt. M. D. Makane - Cross—

1 Q. Did you see him on the bridge during the daytime?

2 A. Yes. Whenever he wanted to have a point of contact with  
3 us he used to come on the bridge.

4 Q. And that would be during the daytime?

5 A. Because daytime, whenever he wanted, he was pleased to  
6 move.

7 Q. Anytime during the day?

8 A. Anytime.

9 Q. Now, before he boarded the ship did you still have  
10 difficulty in communicating with the pirates?

11 A. Before he boarded the pirates were not interested in  
12 communicating -- in communicating with us. All that they  
13 wanted to do was bring the ship in Somalian waters, and after  
14 the ship came in Somalian waters they started looting, they  
15 started pilfering our things. They started taking our mobile  
16 phones, our cameras, whatever cash we had with us. They were  
17 not interested in communicating.

18 Q. During that five- to seven-day period before Shibin came  
19 on board who did you speak to? How did you communicate with  
20 them?

21 A. It was only with us. And by -- the other pirates, with  
22 broken English and by sign language we used to speak.

23 Q. Were you able to communicate to them anything about how  
24 the ship was functioning or malfunctioning, problems that you  
25 had with the ship?

—Capt. M. D. Makane - Cross—

1 A. Immediate -- at that time we were just going on a voyage  
2 and everything was working, so at that time about the ship we  
3 didn't have -- we didn't have any problems. We did not have  
4 any problems, so there was not any technical things that we  
5 discussed with the pirates.

6 Q. You did not speak Somalian?

7 A. I do not know Somalian, no.

8 Q. So whatever conversations occurred between these people  
9 in their own native language, you are not able to tell us  
10 what they were saying.

11 A. I cannot tell what conversation was happening in them,  
12 but from the behavior and when they were looking at us we  
13 could make out whether they are targeting us or whether they  
14 are saying anything about us.

15 Q. All right. Now, before the initial demands were made --  
16 and you talked about this yesterday. You had said that Ali  
17 is the one -- Shibin is the one that had communicated the  
18 first demand to the company, true?

19 A. That is right.

20 Q. All right. And, in fact, he used to get a briefing from  
21 the pirates prior to the time that he came up with the  
22 demand. Isn't that true?

23 A. That is true.

24 Q. And, in fact, it was not his decision, you have written  
25 before, it was the pirates' decision as to the demand.

—Capt. M. D. Makane - Cross—

1 A. It was the combined decision of the defendant and the  
2 pirates. Whatever cargo papers, whatever things he had find  
3 out he used to interact with the pirates, and then it used to  
4 be a combined decision. It was not his decision or the  
5 pirates', but he used to give a feedback to the pirates.

6 Q. Well, in fact, you have said before, have you not, that  
7 it was not his own decision to make the demand, true?

8 A. That is right. It is the interaction between him and the  
9 pirates, and then they arrive at a decision.

10 Q. And whether or not he was merely translating what their  
11 instructions to him were you're not -- you can't tell us.

12 A. I can't tell, but in the initial stages it was he who was  
13 the one who was instrumental in drafting the faxes and  
14 telling us what to tell. That is what he did.

15 Q. Right. And whether or not he was instructed or ordered  
16 by the pirates to be able to do --

17 THE COURT: You've covered this four times now.  
18 That's enough.

19 MR. BROCCOLETTI: Yes, sir.

20 THE COURT: Move on, Mr. Broccoletti.

21 MR. BROCCOLETTI: Yes, sir.

22 BY MR. BROCCOLETTI:

23 Q. Now, at this particular point you were still on the  
24 bridge?

25 A. I was there on the bridge all the time, sir.



—Capt. M. D. Makane - Cross—

1 Q. And the other crew members had been placed in other  
2 cabins down below?

3 A. From the time we were hijacked to September 9 all the  
4 crew members were one deck below, and after September 9 the  
5 crew had transferred on the bridge.

6 Q. Now, you had also said in your testimony yesterday that  
7 you had seen the defendant --

8 THE COURT: Excuse me.

9 MR. BROCCOLETTI: Yes, sir.

10 THE COURT: Let's don't repeat his testimony  
11 anymore. If you have questions, you can ask questions.  
12 Constantly repeating his testimony -- you may or may not be  
13 correct in repeating it, but the fact of the matter is you  
14 must ask him questions.

15 BY MR. BROCCOLETTI:

16 Q. Was the defendant armed?

17 THE COURT: He's testifying, and I understand you  
18 have a right to cross-examine, but when you start saying,  
19 "You testified to this" and "You testified to that" -- if he  
20 did so testify, you can ask him if he did, but don't say,  
21 "You did," unless -- I don't know if you have a transcript in  
22 front of you. The problem is I don't know exactly what he  
23 may have testified to or didn't. I know generally.

24 In any event, I want you to ask him questions.

25 MR. BROCCOLETTI: Yes, sir.

—Capt. M. D. Makane - Cross—

1 THE COURT: All right.

2 BY MR. BROCCOLETTI:

3 Q. Was he armed?

4 A. He was not armed for the -- he did not carry a gun or  
5 anything for the period from the time he came until August --  
6 until August, but after that I have seen him keeping watch  
7 from the bridge on the fo'c'sle, and at that time he used to  
8 have a gun with him.

9 Q. Do you recall speaking on January 4th, 2011, to the  
10 German authorities once the ship had been released?

11 A. Yes, when the ship came to Salalah I spoke to the German  
12 authorities.

13 Q. And that interview was conducted in English.

14 A. That interview was conducted in English.

15 Q. And that interview was recorded.

16 A. That interview was recorded.

17 Q. And did you not -- were you not asked -- this is on  
18 page 820. Were you not asked, "The negotiators, were they  
19 also armed," and you answered, "No, the negotiator Ali Jama  
20 was definitely not armed"? Did you answer that?

21 A. I answered, "The negotiator was not armed" when he came  
22 and when he was acting as a negotiator. And I have told  
23 whatever I have seen -- whatever I have seen afterwards.

24 Q. And in August you had met -- was there a change in August  
25 in the defendant's position?

—Capt. M. D. Makane - Cross—

1 A. Yes, there was a change in the defendant's position.

2 Q. That change was -- what was the change?

3 A. The change was earlier he had the privileges, he was  
4 staying in the cabin, he was getting all the comforts, but  
5 after, in the first week of August -- that is, somewhere  
6 around August 7 -- he was transferred on the bridge and he  
7 was like an ordinary pirate.

8 Q. And that change was conducted by the pirate Budea?

9 A. Yes, it was Budea and the other pirates who had done  
10 these things.

11 Q. Was Budea then in charge? Was he the commander?

12 A. Budea was acting like a commander, but I cannot comment  
13 and say that he was the whole and sole commander.

14 Q. And Shibin was changed at that point because he was  
15 accused of being in secret touch with the company.

16 A. That is right. They suspected him to negotiate with the  
17 company secretly -- that is why they changed him -- and not  
18 coming up with the ransom demand.

19 Q. And at that time he was removed from his cabin, and he  
20 was held on the bridge.

21 A. That is right.

22 Q. And once he was held on the bridge, that's when the  
23 vessel was transferred from Garaad to Hobyo.

24 A. That is right.

25 Q. And when the vessel was transferred from Garaad to Hobyo,

—Capt. M. D. Makane - Cross—

1 that's when the threats were made to you about turning the  
2 vessel over to al-Shabaab.

3 A. That is right.

4 Q. And at the time that the vessel was moved and the threats  
5 were made the defendant was on the bridge.

6 A. The defendant was on the bridge.

7 Q. And the defendant was not the negotiator at that point,  
8 was he?

9 A. It is very difficult for me to tell, because what is  
10 happening behind my back I do not -- I do not know. But at  
11 that time he is not picking up the calls. But, again, when  
12 Osman made the call again he came in between and we picked up  
13 a call and we are answered Rajesh Chava.

14 Q. Who is Osman, also known as Sharlaawe?

15 A. He is the one who has made the call, and he is appointed  
16 as commander at that time. When he's making the calls he's  
17 calling himself he's the commander and in charge.

18 Q. After the defendant was removed to the bridge Osman was  
19 then acting as the negotiator. Isn't that true?

20 A. Osman in his phone calls has said he's the commander of  
21 the pirates.

22 Q. And then for a period of 10 to 15 days after the  
23 defendant is held on the bridge Osman was the one who was the  
24 in-between person, acting as the in-between person.

25 A. He was the acting commander of the pirates, and that is

—Capt. M. D. Makane - Cross—

1 what he has said in his first call which he has made to  
2 Rajesh Chava; that he's the commander.

3 Q. You also had said that he was the negotiator, did you  
4 not?

5 A. No, I have not said that.

6 MR. BROCCOLETTI: All right. This is on page 815.

7 BY MR. BROCCOLETTI:

8 Q. On the same interview that you had with the German  
9 authorities on January the 4th of 2011 that we've already  
10 gone over didn't you say, "Then one Osman -- we used to call  
11 him Sharlaawe -- he was acting as the negotiator"?

12 A. He was acting as the commander, and he was between the  
13 company and this -- the pirate spokesman. That is what he  
14 was acting.

15 Q. The question was did you say he was acting as a  
16 negotiator?

17 A. It had been misunderstood there.

18 Q. Then between that period after Osman, Leon came on board.

19 A. Leon came on board on September 8. That is the first  
20 contact I had with Leon.

21 Q. So the time that you were in Hobyo and the threats were  
22 made to you from al-Shabaab Osman was in charge, correct?

23 A. Osman was the acting commander.

24 Q. And the defendant was on the bridge.

25 A. The defendant used to be on the bridge.

—Capt. M. D. Makane - Cross—

1 Q. And then for that period of time that the -- you had  
2 talked about the beginning of the torture in the first week  
3 of September. The defendant was on the bridge during that  
4 period of time, too, wasn't he?

5 A. Yes, he was on the bridge.

6 Q. He was not allowed to go to his cabin?

7 A. It was only for a period of 15 to 20 days. He was not  
8 allowed to go in the cabin, but after that again he was a  
9 free person.

10 Q. And didn't the pirates also threaten him?

11 A. I do not know about that. I cannot tell about that.

12 Q. In that same interview on January the 4th, 2011, on page  
13 815, didn't you say, "They started torturing us, and they  
14 also threatened him"?

15 A. I -- it's January 8, and it's a long time. I cannot  
16 recall each and every word what I have said.

17 Q. I understand. Would you agree that your memory would  
18 have been fresher as of January the 4th of 2011 than today,  
19 in April of 2012?

20 A. Whatever the incidents have offered to me -- some of them  
21 I cannot forget. Some of them are still there with me. I  
22 can remember, but it's difficult to remember each and every  
23 word I have told or I have given in the interview to the  
24 pirates -- to the German authorities.

25 Q. I understand. Now, did you call or did you term that

—Capt. M. D. Makane - Cross—

1 period of September when the bulk of the torture occurred  
2 "Black September"?

3 A. I did not tell them Black September, but I tell them that  
4 was one of the worst periods in my -- in my life.

5 Q. I understand that. And Leon came on board as the  
6 negotiator sometime around the 8th of September.

7 A. 8th of September Leon just interviewed me. And he asked  
8 me about the fuel, the fresh water and the satellite  
9 connection, but at that time I don't know if Leon is the  
10 negotiator or not.

11 Q. And after that time that's when -- when Leon came on  
12 board, that's when you were confined for that 21-day period.

13 A. Leon came on board on September 8th, and I was confined  
14 to solitary confinement on September 8th.

15 Q. For the period of 21 days, as you've talked about.

16 A. That is right.

17 Q. Do you remember when the defendant had left the ship the  
18 first -- did he leave the ship one time or twice?

19 A. He left somewhere in the month of -- mid July or  
20 somewhere near that.

21 Q. And do you remember how long he was gone?

22 A. He was gone for about a week's time, week to ten day's  
23 time.

24 Q. And did anything happen to you during that period of time  
25 that he was gone?

—Capt. M. D. Makane - Cross—

1 A. Nothing happened -- nothing happened to us when he was on  
2 leave.

3 Q. Generally speaking, how many pirates would be on board?

4 A. We could see only the pirates who were on the bridge, and  
5 when we went to eat our food in the mess hall we could only  
6 see there -- the pirates there. It's very difficult to give  
7 an exact estimate of how many pirates were there at that  
8 time, but on an average about 50 pirates used to be there. I  
9 can't say. But, again, this is what I have seen when the  
10 people are coming there to eat and when the people are coming  
11 on the bridge, and when I go down I can see the pirates.

12 Q. Did any of the other pirates besides Shibin speak  
13 English?

14 A. There may have been some pirates who could speak English,  
15 but they have not interacted with me.

16 Q. During the time that you were interacting with Shibin did  
17 he ever allow you to use the cell phone?

18 A. He never allowed me to use the cell phone. I have not  
19 made any calls from his cell phone.

20 Q. Did he ever allow you to use the phone itself to call  
21 your family, the satellite phones?

22 A. The satellite phones -- whenever he allowed the other  
23 crew members I also used the satellite phones to call my  
24 family.

25 Q. Did he ever return to you any laptops that were taken?



-----Capt. M. D. Makane - Cross-----

1 A. Yes, my laptop that had been taken had been returned to  
2 me.

3 Q. And did he return that to you?

4 A. Yes, that laptop was returned to me.

5 Q. The speech that came at the end that you -- do you recall  
6 testifying -- excuse me.

7 The speech that came at the end of the ransom  
8 negotiations --

9 A. Yes.

10 Q. At that point the defendant addressed the crew? The  
11 defendant addressed the -- Shibin spoke to the crew?

12 A. He --

13 THE COURT: Are you speaking about after the payment  
14 of the money?

15 MR. BROCCOLETTI: Yes, sir, right at the end.

16 THE COURT: At the end.

17 THE WITNESS: At the end, the last speech which he  
18 said, "You wouldn't like to me, you wouldn't like to see me,  
19 you would not be happy to see me, you would hate me," that is  
20 what he had said.

21 BY MR. BROCCOLETTI:

22 Q. And he also talked to you about Pandey.

23 A. It is not at the last -- one speech before he had made  
24 about Pandey.

25 Q. Well, that's the one -- that's my fault. I'm sorry. I

—Capt. M. D. Makane - Redirect—

1 apologize.

2 The speech that he gave to the crew about Pandey.

3 A. Yes. He said, "Pandey has acted" -- "You should not  
4 treat him like a traitor, and he has acted and cooperated  
5 with us and you should forgive me, you should forgive him."  
6 That is what he said, and he used to call him his son.

7 Q. And that was the extent of his speech, correct?

8 A. Yes, that was the extent of his speech.

9 MR. BROCCOLETTI: Thank you.

10 MR. DEPADILLA: Very briefly, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. DEPADILLA:

13 Q. Mr. Broccoletti asked you whether the defendant was being  
14 threatened at the time that you described when you were lying  
15 on the deck with those cable ties being applied.

16 Tell us what you could see of the defendant when  
17 those cable ties were first being tied on your arms and legs.

18 A. When the cable ties were being tied on the arms and legs  
19 the defendant was there with the pirates, and he was also  
20 threatening us.

21 Q. Okay. Was he eating at that time?

22 A. I beg your pardon?

23 Q. Was he eating?

24 A. Was he --

25 Q. Was he eating food? What was he doing?

1 A. He was there on the poop deck the first time.

2 Q. Okay. I'm talking about when you're on the bridge --

3 A. Yes.

4 Q. -- and you're lying on the floor with the cable ties and  
5 they're tightening them. What is the defendant doing at that  
6 point?

7 A. The defendant is eating khat, eating khat and having tea  
8 on -- at that time with the other pirates and the financier  
9 and the very important pirates there on the bridge.

10 Q. And what else are they doing?

11 A. They're talking and discussing among themselves and  
12 laughing and chit-chatting.

13 Q. During that time when you're having those ties tightened  
14 and you're looking to the defendant is he ever being  
15 threatened by anybody that you can see?

16 A. No, he was not being threatened. He was not being  
17 threatened by other pirates at that particular time.

18 MR. DEPADILLA: No further questions, Your Honor.

19 THE COURT: Anything else?

20 MR. BROCCOLETTI: No, Your Honor. Thank you.

21 THE COURT: You're instructed not to discuss your  
22 testimony with anyone until this case is complete.

23 You may be excused at this time.

24 MR. DEPADILLA: Thank you, Your Honor.

25 \*\*\*\*\*

CERTIFICATION

I certify that the foregoing is a correct transcript  
of an excerpt from the record of proceedings in the  
above-entitled matter.

s/s

Heidi L. Jeffreys

July 6, 2012

Date

Heidi L. Jeffreys, Official Court Reporter